

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 14, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2026AP929

Cir. Ct. No. 2023TP16

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO K.R., A PERSON UNDER THE
AGE OF 18:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

K.T.R.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
KRISTIN M. CAFFERTY, Judge. *Affirmed.*

¶1 LAZAR, P.J.¹ K.T.R. (hereinafter Keenan)² appeals the circuit court’s order terminating his parental rights for failure to assume parental responsibility. For the following reasons, this court affirms.

BACKGROUND

¶2 Keenan and his daughter’s mother, Sienna, have a history of domestic violence in their relationship, including during Sienna’s pregnancy. In May 2022, Keenan was out on a signature bond, under the condition, among others, that he have no contact with Sienna, including “person, property, residence[,] or family.” In August 2022, Keenan was picked up on additional charges, and he was taken into custody at Racine County Jail from then until November 2022. Keenan was in jail when Sienna gave birth to Kendra in October 2022; he was the presumed father. Keenan was immediately prohibited from having contact with Kendra by virtue of the no-contact order.³ A Child in Need of Protection or Services (CHIPS) petition, in Kendra’s interest, was filed on October 7, 2022.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version. This appeal has been “given preference” and a decision has been issued in under 30 days after the deadline for the reply brief. *See* WIS. STAT. RULE 809.107(6)(e).

² For ease of reading and to protect confidentiality, this court refers to the appellant in this matter and others referenced in this opinion using pseudonyms, rather than initials. *See* WIS. STAT. RULE 809.19(1)(g).

³ Sienna was also ordered to have no contact with Kendra, who was born positive for cocaine, while Sienna tested positive for cocaine during her pregnancy and at the time of Kendra’s delivery. Upon Kendra’s birth, the State requested temporary physical custody, and Keenan attended the hearing. Initially, Kendra was in a hospital neonatal intensive care unit, and she was placed with a foster family five days after her birth.

¶3 In November 2022, Keenan received genetic testing results showing he was Kendra’s biological father.⁴ That same month, Keenan was sentenced and placed on probation. The conditions of his probation included the same no-contact provision as his bond—no contact with Sienna’s person, property, residence, or family. Thus, he was still prohibited from contact with Kendra.

¶4 In March 2023, Keenan returned to Racine County Jail, where he remained until June 2023. In April 2023, the CHIPS court entered a dispositional order relating to Kendra. Under “[o]rders and [c]onditions required for safe return / continued in-home placement of child[,]” the document states, “The following conditions are required to be met by the below-identified individual(s) for return of the child to the home and the continued in-home placement of the child” and beneath that, both the “Mother” and “Father” boxes were checked. (Formatting altered.) One of the conditions of return for both Sienna and Keenan under “[p]arenting-specific orders” states, “Do not allow any contact, either direct or indirect, between the child and [Keenan].” Under “[o]ther orders[,]” it states:

Mandatory court appearance before return of child: The [c]ourt does not establish any conditions for return of the child to the home of the [presumed father: [Keenan]] until such time that the parent(s) submits himself and/or herself to the jurisdiction of this [c]ourt and requests the [c]ourt to

⁴ Keenan was adjudicated as Kendra’s father at an April 2023 dispositional hearing.

establish such conditions for return.^[5] Further, that such parent(s) shall have no contact, either direct or indirect, until said parent(s) submit themselves to the jurisdiction of this [c]ourt.

¶5 In September 2023, the State filed a termination of parental rights (TPR) petition to terminate Keenan’s parental rights to Kendra, alleging (1) failure to assume parental responsibility under WIS. STAT. § 48.415(6); (2) continuing need of child protection or services, under § 48.415(2); and (3) abandonment, under § 48.415(1).

¶6 In November 2023, Keenan was again sent to Racine County Jail, where he stayed until February 2024. In January 2025, a jury trial was held, where the jury heard the issue of Keenan’s parental rights from testimony offered by the initial intake worker, the ongoing case manager, the foster mother, and Keenan. The ongoing case manager testified that she met with Keenan in October 2023. She explained that Keenan had never been responsible for Kendra’s daily supervision, including providing daily food and clothing, or for providing Kendra’s medical or dental needs. She acknowledged a case note stating that Keenan wanted contact with Kendra. The jury also heard testimony about Keenan’s conduct before Kendra’s birth, the level of his participation in the

⁵ During the January 2025 jury trial on the TPR petition filed by the State in September 2023, the ongoing case manager testified that the purpose of this language was “[t]o ensure the parent is aware of the conditions of return, it’s important they show up to these court hearings to understand what is going on with the case.” As this language was drafted prior to the adjudication of Keenan as Kendra’s father, it was outdated with respect to Keenan’s paternal status. The ongoing case manager agreed that “[t]he language in there was addressing that particular situation of the no shows by him and no indication there was going to be any adjudication [of Keenan’s paternity] at that point[.]” (While out of custody, Keenan had missed two CHIPS hearings, in December 2022 and February 2023, and at the latter hearing, Keenan was found in default.) While this language was never modified, the ongoing case manager agreed that, because Keenan was adjudicated as the father, “all the conditions of return [in the dispositional order] would apply to [Keenan].”

CHIPS case, his conduct while out of custody, his repeated returns to custody, his treatment decisions, and his lack of financial or material support.

¶7 At the conclusion of the State’s case, Keenan moved for directed verdict on the continuing CHIPS and abandonment grounds. Keenan argued that the evidence had shown that it was impossible for Keenan to meet the conditions of return on the continuing CHIPS ground⁶ and that no-contact orders had been in place throughout the abandonment period. The trial court denied the motion.

¶8 Before instructing the jury, the trial court added the defense-requested impossibility question to the continuing CHIPS verdict. The jury also heard defense counsel argue that the criminal court orders, probation restrictions, and CHIPS no-contact order restrictions could be read to prohibit Keenan from making direct and indirect communication with Kendra, including communication through third parties.

¶9 During deliberation, the jury asked for the initial dates of the no-contact orders. After the trial court and parties reviewed the record, the jury was provided the relevant dates in August 2022 and November 2022.

¶10 The jury found: as to continuing CHIPS, that Kendra had been in need of protection or services and placed outside the home for the required amount of time, the Racine County Department of Social Services had made reasonable conditions for return, and it was impossible for Keenan to meet all the conditions of return, thus dismissing this ground; as to failure to assume parental

⁶ For example, one condition for return was the “requirement of maintaining a residence that is structurally safe and free from environmental hazards[,]” and the ongoing case manager testified that it would be impossible for Keenan to meet that condition while in custody.

responsibility, that Keenan failed to assume parental responsibility for Kendra after knowing or having reason to believe he was her father; and as to abandonment, that Kendra was placed outside of the parent's home pursuant to a circuit court order that contained the termination of parental rights notices, but did not find that Keenan failed to visit or communicate with Kendra for a period of three months or longer, thus dismissing this ground.

¶11 Keenan moved for judgment notwithstanding the verdict (JNOV) on failure to assume parental responsibility. The trial court said it was “not inclined to make any changes to the jury’s verdict[,]” but allowed Keenan time to brief the issue. In his brief, Keenan argued that the impossibility finding regarding the conditions for return impacted his ability to form a parental relationship with Kendra, such “that the impossible conditions impermissibly taint[ed] the ground of failure to assume parental responsibility.”

¶12 The State and guardian ad litem (GAL) filed separate responses. The State’s brief treated Keenan’s motion as a sufficiency of the evidence motion rather than a motion for JNOV. Thus, it analyzed the testimony given at trial to show that there was sufficient evidence to support the jury’s finding that Keenan had not assumed parental responsibility and did not address Keenan’s argument that the impossible conditions of return impacted his ability to assume parental responsibility.

¶13 The GAL argued that the conditions for return did not render it impossible for Keenan to demonstrate parental responsibility of Kendra. The GAL argued that, even if Keenan had believed he could not contact Kendra, he could have assumed parental responsibility in other ways, including taking steps to be released from jail and thereafter staying out of jail and addressing his substance

abuse issues. The GAL noted that while Keenan had received an alternative to revocation that included completing an alcohol and drug abuse (AODA) program, and while Keenan said he left the program for “personal business[,]” “[t]his ‘personal business’ clearly did not include providing for [Kendra].”

¶14 In March 2025, the trial court denied Keenan’s motion. It acknowledged that the CHIPS conditions should have been better tailored to an incarcerated parent⁷ and recognized that this likely explained the jury’s impossibility finding. The court distinguished the impossibility issue pertaining to the continuing CHIPS ground from the failure to assume parental responsibility ground, relying on the jury instructions, the jury’s knowledge of the no-contact orders, and the instruction allowing jurors to consider efforts that Keenan could have made despite incarceration, including whether those efforts were prohibited or impeded. The court also identified evidence of Keenan’s criminal conduct, his decision to leave AODA treatment for “personal reasons,” and domestic violence between him and Sienna during Sienna’s pregnancy.

¶15 In May 2025, Keenan’s parental rights to Kendra were terminated at a disposition hearing. Keenan appeals.

⁷ Specifically, the trial court stated,

I will say that I think the reason that that happened was because [Keenan] had been in default and not participating in the matter and then when the dispositional matter took place, he had appeared because he was back in custody. At that time a better situation would have been that we took a moment to address the conditions. He was in custody at that moment. Unfortunately, that did not occur.

DISCUSSION

¶16 Keenan argues that he is entitled to JNOV “because the failure to assume parental responsibility statute contemplates that the parent has the option to assume parental responsibility.” Alternatively, he argues that the statute is unconstitutional as applied to him because he was found unfit as a parent when a no-contact order was in place.

I. Keenan is not entitled to JNOV because although the CHIPS conditions of return were found to be impossible, that finding does not establish that all avenues of assuming parental responsibility were impossible, and WIS. STAT. § 48.415(6) does not have a categorical exception for judicial orders prohibiting contact.

¶17 Whether the trial court erred in granting Keenan’s motion for JNOV is a question of law that this court reviews de novo, although we benefit from the trial court’s analysis. See *Danner v. Auto-Owners Ins.*, 2001 WI 90, ¶41, 245 Wis. 2d 49, 629 N.W.2d 159; *Management Comput. Servs., Inc. v. Hawkins, Ash, Baptie & Co.*, 206 Wis. 2d 158, 177, 557 N.W.2d 67 (1996). In a motion for JNOV, the findings of the verdict are accepted as true, and the movant asserts that for reasons other than those decided by the jury, the movant should be granted judgment. *Management Comput. Servs.*, 206 Wis. 2d at 177. Thus, the sufficiency of the evidence is not in dispute; rather, the focus is on whether the movant should have judgment for reasons other than those decided by the jury. *Id.*; see WIS. STAT. RULE 805.14(5)(b).

¶18 Statutory interpretation is also a question of law this court reviews independently. *Stuart v. Weisflog’s Showroom Gallery, Inc.*, 2008 WI 22, ¶11, 308 Wis. 2d 103, 746 N.W.2d 762. The analysis begins with the statutory language, read in context and as part of the statutory structure. *State ex rel. Kalal*

v. Circuit Ct. for Dane Cnty., 2004 WI 58, ¶¶45-46, 271 Wis. 2d 633, 681 N.W.2d 110.

¶19 Keenan fails to establish that the jury’s findings require judgment in his favor because the three grounds for the TPR petition have different elements and treat the no-contact orders differently.⁸ Keenan’s theory that “the failure to assume parental responsibility statute contemplates that the parent has the option to assume parental responsibility” is misplaced.⁹

¶20 The jury’s finding that the CHIPS conditions of return were impossible is not equivalent to demonstrating that all avenues of assuming parental responsibility were impossible. Keenan’s theory that the assuming parental responsibility ground was tainted by the finding of impossible conditions

⁸ In addition, this court notes that the jury instructions also assigned different temporal ranges to the three grounds, and thus, the jury’s findings as to each ground considered different time periods. For continuing CHIPS, the jury was told to decide whether Keenan had failed to meet the conditions of return based on the facts and circumstances as they existed on the date the TPR petition was filed. For failure to assume, the jury was told to consider the circumstances throughout Kendra’s entire life. For abandonment, the jury was directed to the period from October 2022 through July 2023.

⁹ In asserting his theory, Keenan relies heavily on **State v. Bobby G.**, 2007 WI 77, 301 Wis. 2d 531, 734 N.W.2d 81, which is distinguishable from Keenan’s case: the biological father in **Bobby G.** did not learn of his child’s existence until after the TPR petition had been filed. *Id.*, ¶3. In **Bobby G.**, our supreme court avoided the constitutional question—whether it “is unconstitutional to terminate a father’s parental rights based on a failure to assume parental responsibility under WIS. STAT. § 48.415(6) when the father did not know of the child’s existence until after the petition for termination of parental rights was filed”—by holding that the trial court must consider the father’s efforts after he learns he is the father and before adjudication on the grounds. *Id.*, ¶¶3, 109. The circumstance in **Bobby G.** that rendered it impossible for the father to assume parental responsibility was that the father had no knowledge that he was the child’s father until after the TPR was filed, and thus, he could not have assumed parental responsibility before the TPR filing. Unlike in **Bobby G.**, Keenan knew he could have been Kendra’s father prior to her birth—he even attended the hearing on temporary physical custody—and by April 2023, he was adjudicated as her father before the State filed the TPR petition. As such, Keenan had adequate opportunity to assume parental responsibility for Kendra via efforts that were not precluded on by the no-contact orders.

for the continuing CHIPS ground depends on an inference that by being prohibited from contact with Kendra, it was impossible for him to assume parental responsibility. However, the trial court was clear and correct in its instructions to the jury in its consideration of the ground of failure to assume parental responsibility. The court said, “You may consider the reasons for the parent’s lack of involvement when you assess all of the circumstances throughout the child’s entire life” and “[i]ncarceration of a parent does not in and of itself establish failure to assume parental responsibility.” Thus, the jury was instructed to consider both Keenan’s incarceration and the no-contact orders in determining whether he failed to assume parental responsibility. The jury was instructed to consider efforts a parent could undertake to establish a substantial parental relationship despite incarceration, and it was instructed to consider whether Keenan’s efforts were prohibited or impeded; the jury asked for the dates of the no-contact orders during deliberation; and it returned separate verdicts for the three different grounds.

¶21 Keenan’s theory imputes an automatic exception for no-contact orders into WIS. STAT. § 48.415(6). Yet, the abandonment ground’s categorical tolling rule does not apply to the failure to assume parental responsibility ground. ***Tammy W-G. v. Jacob T.***, 2011 WI 30, 333 Wis.2d 273, 797 N.W.2d 854, provides the rule for § 48.415(6):

when applying ... § 48.415(6), the fact-finder should consider the involvement of the parent over the entirety of the child’s life. The plain language and legislative history of § 48.415(6) support this interpretation, an interpretation that will avoid absurd results. Moreover, although a parent’s lack of opportunity to establish a substantial relationship is not a defense to failure to assume parental responsibility, the reasons for a parent’s lack of involvement still may be considered in the totality-of-the-circumstances analysis.

Tammy W-G., 333 Wis. 2d 273, ¶38. Thus, § 48.415(6) requires a totality-of-the-circumstances analysis.

¶22 WISCONSIN STAT. § 48.415(6) establishes that failure to assume parental responsibility occurs when “the parent of the child ha[s] not had a substantial parental relationship with the child.” Sec. 48.415(6)(a). It defines “substantial parental relationship” as “the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child.” Sec. 48.415(6)(b). It then provides a nonexclusive list of circumstances that may inform an evaluation of the quality of the relationship between parent and child:

whether the person has expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

Id.

¶23 Unlike WIS. STAT. § 48.415(6), subsection (1), “ABANDONMENT[.]” excludes from the abandonment period any time during which a judicial order prohibited the parent from visiting or communicating with the child. Sec. 48.415(1)(b). The legislature did not place that same categorical exclusion in § 48.415(6).

¶24 Thus, the no-contact orders were relevant to the jury’s consideration of whether Keenan failed to assume parental responsibility. The jury instructions advised that it should consider whether the no-contact orders prohibited or impeded Keenan’s efforts. While the jury could consider lack of opportunity to

establish a substantial relationship within the totality of the circumstances, it is not an automatic defense. See *Tammy W-G.*, 333 Wis. 2d 273, ¶38.

¶25 Keenan’s brief focuses on efforts a parent can undertake to contact, communicate with, and visit with a child, which are precluded by no-contact orders.¹⁰ Given these examples, Keenan insists that he had “no opportunity to form a relationship with [Kendra].” But the jury was able to consider more than whether Keenan could have contacted, communicated with, or visited with Kendra. As the trial court stated at the hearing on the motion after the verdict,

In the determination of the failure to assume parental responsibility, the jury is instructed they can consider an incarcerated parent in determining that failure to assume parental responsibility... . That incarcerated parent conversation establishes different standards than the failure to comply with the conditions in the CHIPS order. There is a list of things that the jury can consider in determining whether there was a substantial parental relationship, and that includes the reasons for the incarceration, the nature of the underlying criminal behavior, whether the parent engaged in that behavior knowing that the resultant incarceration or potential incarceration would prevent or hinder the parent from assuming parental responsibilities. Then there is a list of efforts that could be made in spite of incarceration that was read to the jury.

Regardless whether there was a no-contact order in place, the list of things -- and the jury was well aware of the no-contact orders that were in place -- requests or absence of requests for information about the child’s health and welfare, appropriate efforts to communicate with those responsible for the care and welfare of the child, the jury was able to consider all of that.

Also, I believe the jury was entitled to consider what the guardian ad litem pointed out as I think a very important factor, very relevant evidence that [Keenan] made a

¹⁰ Keenan also conflates requests for information relating to a child’s education, health, and welfare with attempts to contact a child via a third party.

decision to leave the treatment facility that he was given an opportunity to go to which would have allowed him to address his substance abuse issues and could have led to a resolution to some of his substance abuse issues. He continued to involve himself in the criminal justice system and he chose not to willingly participate in that program for, quote, “personal reasons,” end quote.

There was also evidence during the pregnancy [Keenan] exposed [Sienna] to some domestic violence. I think that information was contained in the record and the court’s instructions to the jury on the failure to assume parental responsibility for incarcerated parent would have adequately addressed any possible contamination by the impossible conditions.

So I do not believe there was any tainting in this particular case.

¶26 This court agrees with the trial court. The jury had before it evidence bearing on whether Keenan had a substantial relationship with Kendra that involved more than daily care of or contact with the child. To start, the statute provides examples of different means by which a parent may demonstrate effort to form a relationship with his or her child. Two of those concern conduct that would not necessarily be impeded by incarceration or no-contact orders, such as whether Keenan “expressed concern for or interest in the support, care or well-being of the child” and whether Keenan “expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.” WIS. STAT. § 48.415(6)(b). Other considerations also inform a totality-of-the-circumstances assessment, including Keenan’s criminal conduct and his decision to leave court-ordered treatment. Neither incarceration nor no-contact orders, standing alone, preclude a finding that Keenan failed to assume parental responsibility.

¶27 For these reasons, this court concludes that Keenan was not entitled to JNOV as a matter of law.

II. WISCONSIN STAT. § 48.415(6) is not unconstitutional as applied to Keenan.

¶28 Whether a statute is unconstitutional as applied presents a question of law this court reviews independently. *Monroe County DHS v. Kelli B.*, 2004 WI 48, ¶16, 271 Wis.2d 51, 678 N.W.2d 831. A statute is presumed constitutional, and a challenger must prove the statute unconstitutional beyond a reasonable doubt. *Tammy W-G.*, 333 Wis.2d 273, ¶47. In an as-applied challenge, neither party faces a presumption that the statute was constitutionally applied. *Id.*, ¶48. Here, if a fundamental parental liberty interest is implicated, strict scrutiny requires the statute, as applied, to be narrowly tailored to advance a compelling state interest. *Id.*, ¶52. If no fundamental parental liberty interest is implicated, rational-basis review applies. *Id.*, ¶53. Wisconsin’s compelling interest under WIS. STAT. § 48.415 is protecting children from unfit parents. *Kelli B.*, 271 Wis. 2d 51, ¶25.

¶29 Keenan argues that WIS. STAT. § 48.415(6) is unconstitutional as applied to him “because he cannot be penalized for failing to do something he was prohibited from doing.” He cites to *Carla B. v. Timothy N.*, 228 Wis. 2d 695, 598 N.W.2d 924 (Ct. App. 1999): “We conclude that the logical interpretation of § 48.415(1)(b) is that the parent cannot be penalized for failure to do something which he or she is prohibited from doing.” *Carla B.*, 228 Wis. 2d at 704. *Carla B.* is distinguishable because it interpreted the express tolling language in § 48.415(1)(b) and does not impute this language to § 48.415(6).

¶30 Keenan also relies on *Kenosha County Department of Human Services v. Jodie W.*, 2006 WI 93, 293 Wis. 2d 530, 716 N.W.2d 845: “[A] parent’s failure to fulfill a condition of return due to his or her incarceration, standing alone, is not a constitutional ground for finding a parent unfit.” *Id.*, ¶49.

Jodie W. concerned the parental termination ground of continuing CHIPS, holding that “the court-ordered conditions of return are [required to be] tailored to the particular needs of the parent and child[,]” and thus, those conditions must account for whether the parent is incarcerated because “[a] contrary interpretation would render the statute unconstitutional.” *Id.*, ¶51. The constitutional defect in **Jodie W.** arose because the circuit court relied on a condition of return that incarceration made impossible without considering other facts and circumstances particular to Jodie’s parenting. *Id.*, ¶¶52, 55-56. Here, the jury was asked whether Keenan’s conditions of return were impossible, and the jury answered yes: the impossibility finding precluded a finding of unfitness on the continuing CHIPS ground.

¶31 Our supreme court in **Jodie W.** explained:

The United States Supreme Court has recognized a parent’s fundamental right to the care and custody of his or her child, and concluded that a state may not terminate this right without an individualized determination that the parent is unfit. **Stanley v. Illinois**, 405 U.S. 645, 649 (1972). Absent a finding of unfitness, it is presumed that children are best served by remaining with their natural parents. **Santosky v. Kramer**, 455 U.S. 745, 760 (1982).

Jodie W., 293 Wis. 2d 530, ¶40. The State’s interest is protection of children from unfit parents. **Kelli B.**, 271 Wis. 2d 51, ¶25. Here, the individualized totality-of-the-circumstances determination, rather than the no-contact order itself, supplied the basis for the unfitness finding.

¶32 Despite Keenan’s assertions that the no-contact orders precluded him from establishing a substantial relationship with Kendra on the failure to assume responsibility ground, the jury was not instructed to deem Keenan unfit merely because he was subject to no-contact restrictions. Thus, there was no

categorical determination that the no-contact orders rendered Keenan unfit to assume parental responsibility. Rather, the jury was instructed to consider the totality of the circumstances in evaluating the reasons for Keenan's lack of involvement and whether his efforts to establish a substantial relationship with Kendra were prohibited or impeded, including evidence concerning his conduct, the restrictions he faced, his explanations for his lack of involvement, and any effort he undertook to assume parenting. See *Tammy W-G.*, 333 Wis. 2d 273, ¶38. The jury considered facts that included conduct and parental responsibilities unrelated to prohibited direct contact. This court concludes that WIS. STAT. § 48.415(6) was narrowly tailored to the State's interest and is thus not unconstitutional as applied to Keenan.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

